Supreme Court, U.S.
FILED

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No. [redacted] OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

DAVID L. SMITH,

Petitioner,

v.

REGIONAL TRANSPORTATION DISTRICT, RICHARD BAUMAN, ROBERT GARSIDE, RICHARD REYNOLDS, ELLSWORTH WALKER, JAMES MISEK,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

DAVID L. SMITH

1630 Welton Street, Suite 300
Denver, Colorado 80202
(303) 534-0153

PRO SE ATTORNEY-PETITIONER

43PM

QUESTIONS PRESENTED FOR REVIEW

Whether by issuing her orders imposing immediately payable attorney fees and costs of approximately $9,500.00, and other harsh and unjustified sanctions, against Mr. Smith, Judge Weinshienk, who is demonstrably biased, engaged in judicial misconduct which deprived Mr. Smith of his liberty and property interests in his good name, reputation, honor and integrity, and in his right to practice law and make a living, in violation of his Fifth Amendment right to due process of law.

Whether Mr. Smith was therefore entitled, as a matter of Fifth Amendment due process of law, to have his appeal of this judicial misconduct heard and decided by a fair and impartial court of appeals.

Whether because of its previous orders and judgments imposing harsh and unjustified sanctions and discipline against Mr. Smith, and its refusal to provide a statement of reasons, addressing the issues raised and briefed on appeal, for its order and judgment affirming the orders issued by Judge Weinshienk imposing immediately payable attorney fees and costs of approximately $9,500.00, and other harsh and unjustified sanctions, against Mr. Smith, the Tenth Circuit's fairness and impartiality might reasonably be questioned.

Whether the Tenth Circuit was therefore obligated to disqualify itself from the case pursuant to 28 U.S.C. § 455(a).

Whether by failing or refusing to disqualify itself from the case, the Tenth Circuit again deprived Mr. Smith of his liberty and property interests in his good name, reputation, honor and integrity, and in his right to practice law and make a living, in violation of his Fifth Amendment right to due process of law.

Whether the Tenth Circuit also so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such procedure by Judge Weinshienk, as to call for the exercise of the Supreme Court's power of supervision.

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

DAVID L. SMITH,

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v.

REGIONAL TRANSPORTATION DISTRICT, RICHARD BAUMAN, ROBERT GARSIDE, RICHARD REYNOLDS, ELLSWORTH WALKER, JAMES MISEK,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

David L. Smith hereby files his petition for a writ of certiorari:

OPINIONS BELOW

Order issued by the United States Court of Appeals for the Tenth Circuit on November 29, 1993 suspending Mr. Smith from the practice of law in the Tenth Circuit until he pays more than $50,000.00 in harsh and unjustified sanctions imposed against him by the Tenth Circuit and by the United States District Court for the District of Colorado.

Order issued by the Tenth Circuit on February 13, 1996 disbarring Mr. Smith from the practice of law in the Tenth Circuit based on his alleged violation of its (November 29, 1993) suspension order.

Order issued by the Tenth Circuit on February 16, 1996 affirming the order issued by the United States District Court for the District of Colorado on February 10, 1995 imposing "simultaneous and identical" discipline against Mr. Smith as that imposed against him by the Tenth Circuit in its (November 29, 1993) suspension order.

Order and judgment issued by the Tenth Circuit on July 23, 1996 affirming the orders issued by United States District Judge Zita L. Weinshienk imposing immediately payable attorney fees and costs of approximately $9,500.00, and other harsh and unjustified sanctions, against Mr. Smith.

Order issued by the Tenth Circuit on August 29, 1996 denying Mr. Smith's petition for rehearing and suggestion for rehearing en banc of its (July 23, 1996) order and judgment.

JURISDICTION

28 U.S.C. § 1254 is the statute believed to confer jurisdiction on the Supreme Court of the United States to review this case on certiorari.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED IN THE CASE

The Fifth Amendment to the Constitution of the United States provides:

> . . . [N]or shall any person be . . . deprived of life, liberty, or property, without due process of law. . . .

28 U.S.C. § 455(a) provides:

> Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

STATEMENT OF THE CASE

On November 29, 1993, the United States Court of Appeals for the Tenth Circuit issued its order suspending Mr. Smith from the practice of law in the Tenth Circuit until he pays more than $50,000.00 in harsh and unjustified sanctions imposed against him by the Tenth Circuit and by the United States District Court for the District of Colorado. See In re David L. Smith, 10 F.3d 723 (10th Cir. 1993), cert. denied, ____ U.S. ____, 115 S.Ct. 53, 130 L.Ed.2d 13, (1994). Mr. Smith may apply for readmission to the Tenth Circuit bar when he can

demonstrate that each sanction order of the Tenth Circuit and the District Court has been satisfied. Id.

On February 13, 1996, the Tenth Circuit issued its order disbarring Mr. Smith from the practice of law in the Tenth Circuit based on his alleged violation of its (November 29, 1993) suspension order. See In re: David L. Smith, 76 F.3d 335 (10th Cir. 1996). Mr. Smith's petition for a writ of certiorari contesting, on Fifth Amendment due process grounds, the validity of this disbarment order is currently pending in this Court.[1] See In re: David L. Smith, No. 96-212 (filed on August 6, 1996).

On February 16, 1996, the Tenth Circuit issued its order affirming the disciplinary order issued by the United States District Court for the District of Colorado on February 10, 1995 imposing "simultaneous and identical" discipline against Mr. Smith as that imposed against him by the Tenth Circuit in its (November 29, 1993) suspension order. Mr. Smith may apply for readmission to the District Court bar when he can demonstrate that each sanction order of the Tenth Circuit and the District Court has been satisfied. Mr. Smith's petition for a writ of certiorari contesting, on

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[1]The Tenth Circuit disbarred Mr. Smith from the practice of law in the Tenth Circuit without giving him the evidentiary hearing required by Fed. R. App. P. 46.

Fifth Amendment due process grounds, the validity of the Tenth Circuit's (February 16, 1996) order is currently pending in this Court.[2] See IN THE MATTER OF DAVID L. SMITH, No. 96-244 (filed on August 13, 1996).

On July 23, 1996, the Tenth Circuit issued its order and judgment affirming the orders issued by United States District Judge Zita L. Weinshienk imposing attorney fees and costs of approximately $9,500.00, and other harsh and unjustified sanctions, against Mr. Smith, who raised and briefed the following issues on appeal:

> (1) Whether Judge Weinshienk's arbitrary, discriminatory and otherwise improper application of the Rule 56 summary judgment procedure and standard deprived Mr. Qualls of his First Amendment right to petition the government for a redress of grievances, as well as his Seventh Amendment right to a jury trial.

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[2]The Tenth Circuit refused to reverse the District Court's (February 10, 1995) disciplinary order indefinitely suspending Mr. Smith from the practice of law in the District Court, which was issued on the basis of the Tenth Circuit's (November 29, 1993) order indefinitely suspending Mr. Smith from the practice of law in the Tenth Circuit, even though the Tenth Circuit's (November 29, 1993) order was issued without giving Mr. Smith the evidentiary hearing required by Fed. R. App. 46.

(2) Whether Judge Weinshienk issued her (December 10, 1992) order without giving Mr. Smith prior notice that attorney sanctions were being considered, and without giving him the opportunity to file a brief or otherwise respond to her unsubstantiated attacks on his professional character, judgment and reputation.

(3) Whether by participating (as a member of the recomposed District Court disciplinary panel) in the (February 2, 1995) decision to deny Mr. Smith's motion to continue the District Court disciplinary panel's (September 21, 1994) disciplinary order, including the provision of the order staying the Committee on Conduct's (December 8, 1993) suspension of Mr. Smith from the practice of law in the District Court, nunc pro tunc to November 29, 1993, and in the decision to issue the (February 10, 1995) disciplinary order imposing "identical" discipline against Mr. Smith as that imposed by the Tenth Circuit disciplinary panel in its (November 29, 1993) disciplinary order, and suspending Mr. Smith from the practice of law in the District Court pursuant to D.C.COLO.LR 83.6P., Judge Weinshienk gave effect to a local rule which is unconstitutional on its face, and as applied to Mr. Smith in the District Court disciplinary action, and to Mr. Smith and his clients in pending and potential civil rights litigation, including Qualls.

(4) Whether Judge Weinshienk gave effect to this unconstitutional local rule even though the procedure followed by the Tenth Circuit disciplinary panel was so lacking in notice or opportunity to be heard that it denied due process to Mr. Smith; even though imposition by the recomposed District Court disciplinary panel of the same discipline as that imposed by the Tenth Circuit disciplinary panel has resulted in grave injustice to Mr. Smith; even though the kind of misconduct (if any) established against Mr. Smith has been held by the District Court to warrant substantially less discipline; and even though Mr. Smith's attorney, Mr. Figa, has refused to represent him competently in connection with the Tenth Circuit and District Court disciplinary actions.

(5) Whether by issuing her (May 15, 1995) orders in Qualls removing Mr. Smith as Mr. Qualls' attorney and lifting the stay in his civil rights case, Judge Weinshienk acted beyond the scope of the recomposed District Court disciplinary panel's (February 10, 1995) disciplinary order, which did not permit removal of Mr. Smith as attorney for his clients in pending civil rights litigation.

(6) Whether such permission would constitute an impermissible ex post facto or retroactive application of D.C.COLO.LR 83.6P.; would impermissibly interfere with Mr. Smith's right to represent his clients in accordance with the terms of their

contingent fee agreements; and would impermissibly interfere with Mr. Smith's clients' First Amendment rights to pursue federal civil rights litigation.

(7) Whether this was especially true for Mr. Qualls, who was financially unable to hire substitute counsel, and was incompetent to proceed pro se against experienced defense counsel.

(8) Whether even if the District Court disciplinary panel's (February 10, 1995) disciplinary order permitted Judge Weinshienk to remove Mr. Smith as attorney for his clients in pending federal civil rights litigation, this could not be done without affording procedural due process of law.

(9) Whether Mr. Qualls and Mr. Smith were denied procedural due process of law by Judge Weinshienk's refusal to allow Mr. Smith to argue on their behalf before issuing her (May 15, 1995) orders, which were issued without prior notice of the contemplated removal of Mr. Smith as Mr. Qualls' attorney and without an opportunity to file a brief.

(10) Whether Judge Weinshienk grossly abused her discretion or otherwise acted improperly or in a manner detrimental to the fair and impartial administration of justice by issuing her (June 16, 1995) order refusing to disqualify herself from the case pursuant to 28 U.S.C. § 455(a).

(11) Whether by rubber-stamping Magistrate Judge Abram's sanction order, Judge Weinshienk again grossly abused her discretion or otherwise acted improperly or in a manner detrimental to the fair and impartial administration of justice.

(12) Whether Mr. Qualls and Mr. Smith were entitled to an immediate appeal or writ of mandamus or prohibition under the exception to the final judgment rule established by the Tenth Circuit in Burkett v. Chandler.

(13) Whether Judge Weinshienk's orders were also appealable under the "plain language" of 28 U.S.C. § 1292(a)(1), which permits immediate appeals of rulings relating to injunctions, including stays.

(14) Whether Judge Weinshienk's orders were appealable under 28 U.S.C. § 1291.

(15) Whether the contradiction between the (September 29, 1995) Stipulation of Dismissal With Prejudice and the (September 29, 1995) Settlement Agreement and Full and Final Release evidenced a fraud on Mr. Smith and/or the Court.

(16) Whether Judge Weinshienk's (October 10, 1995) Order of Dismissal is null and void.

(17) Whether by returning Mr. Smith's motions to him on the alleged basis that "Mr. Smith was never made a party to this case by the Court," Judge

Weinshienk grossly abused her discretion or otherwise acted improperly or in a manner detrimental to the fair and impartial administration of justice.

(18) Whether Judge Weinshienk also engaged in judicial misconduct pursuant to 28 U.S.C. § 372(c).

However, the Tenth Circuit refused to provide a statement of reasons, addressing the issues raised and briefed on appeal, for its (June 12, 1996) order and judgment.

ARGUMENT

By issuing her orders imposing immediately payable attorney fees and costs of approximately $9,500.00, and other harsh and unjustified sanctions, against Mr. Smith, Judge Weinshienk, who is demonstrably biased, engaged in judicial misconduct which deprived Mr. Smith of his liberty and property interests in his good name, reputation, honor and integrity, and in his right to practice law and make a living, in violation of his Fifth Amendment right to due process of law.[3] Mr. Smith was therefore entitled, as a matter of Fifth Amendment due process of law, to have his appeal of this judicial misconduct heard and decided by a fair and impartial court of appeals. See Arnett v. Kennedy, 416 U.S.

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[3]The harsh and unjustified sanctions imposed against Mr. Smith by Judge Weinshienk were part of the alleged basis for suspending and disbarring Mr. Smith from the practice of law in the Tenth Circuit and in the District Court.

134, 197, 94 S.Ct. 1633, 40 L.Ed.2d 15 (1974) (White, J., concurring in part and dissenting in part) ("the right to an impartial decision-maker is required by due process" in every case); Morrissey v. Brewer, 408 U.S. 471, 485-86, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972) (decisionmaker bias is grounds for reversal); Mayberry v. Pennsylvania, 400 U.S. 455, 469, 91 S.Ct. 499, 27 L.Ed.2d 532 (1971) (Harlan, J., concurring) ("the appearance of evenhanded justice . . . is at the core of due process"); Goldberg v. Kelly, 397 U.S. 254, 271, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970) (decisionmaker bias is grounds for reversal); Offut v. United States, 348 U.S. 11, 75 S.Ct. 11, 99 L.Ed. 11 (1954) (nor may a judge or other ostensibly impartial decisionmaker "give vent to personal spleen or respond to a personal grievance" in reaching a decision). However, because of its previous orders and judgments imposing harsh and unjustified sanctions and discipline against Mr. Smith, and its refusal to provide a statement of reasons, addressing the issues raised and briefed on appeal, for its order and judgment affirming the orders issued by Judge Weinshienk imposing immediately payable attorney fees and costs of approximately $9,500.00, and other harsh and unjustified sanctions, against Mr. Smith, the Tenth Circuit's fairness and impartiality might reasonably be questioned. Id. The Tenth Circuit was therefore obligated to disqualify itself from the case pursuant to 28 U.S.C. § 455(a).

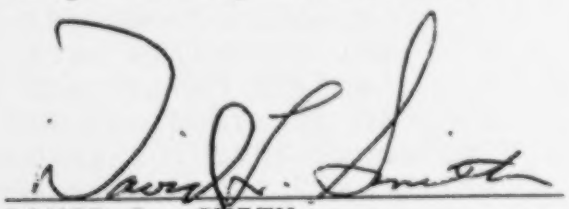
By failing or refusing to disqualify itself from the case, the Tenth Circuit again deprived Mr. Smith of his liberty and property interests in his good name,

reputation, honor and integrity, and in his right to practice law and make a living, in violation of his Fifth Amendment right to due process of law. The Tenth Circuit also so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such procedure by Judge Weinshienk, as to call for the exercise of the Supreme Court's power of supervision.

V. CONCLUSION

Mr. Smith requests this Court to grant his petition for a writ of certiorari, and such other and further relief as may be just under the circumstances, including an order declaring the orders imposing harsh and unjustified sanctions and discipline against him void ab initio.

Respectfully submitted,



DAVID L. SMITH

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PRO SE ATTORNEY-PETITIONER

APPENDIX

Order issued by the United States Court of Appeals for the Tenth Circuit on November 29, 1993 suspending Mr. Smith from the practice of law in the Tenth Circuit until he pays more than $50,000.00 in harsh and unjustified sanctions imposed against him by the Tenth Circuit and by the United States District Court for the District of Colorado A-1

Order issued by the Tenth Circuit on February 13, 1996 disbarring Mr. Smith from the practice of law in the Tenth Circuit based on his alleged violation of its (November 29, 1993) suspension order A-4

Order issued by the Tenth Circuit on February 16, 1996 affirming the order issued by the United States District Court for the District of Colorado on February 10, 1995 imposing "simultaneous and identical" discipline against Mr. Smith as that imposed against him by the Tenth Circuit in its (November 29, 1993) suspension order A-8

Order and judgment issued by the Tenth Circuit on July 23, 1996 affirming the orders issued by United States District Judge Zita L. Weinshienk imposing immediately payable attorney fees and costs of approximately $9,500.00, and other harsh and unjustified sanctions, against Mr. Smith A-11

Mr. Smith's petition for rehearing and suggestion for rehearing en banc (filed on August 5, 1996) of the Tenth Circuit's (July 23, 1996) order and judgment A-15

Order issued by the Tenth Circuit on August 29, 1996 denying Mr. Smith's petition for rehearing and suggestion for rehearing en banc of its (July 23, 1996) order and judgment A-23

United States Court of Appeals
for the Tenth Circuit

In re:	)	[November 29, 1993]
	)	
	)	No. 93-631
David L. Smith	)	

Order

Before Seymour, Chief Judge,
Baldock and Brorby, Circuit Judges

Respondent was ordered to show cause why he should not be fined, disbarred or otherwise disciplined for filing frivolous appeals in numbers 93-1070 and 93-1139, DeHerrera v. Denver, after the entry of this court's orders in Sandlin v. Canady (In re Canady), No. 92-1169 (10th Cir. April 27, 1993) and Dunkin v. Louisiana-Pacific Corp., Nos. 92-1230 & 92-1381 (10th Cir. February 11, 1993), cert. denied, 114 S.Ct. 87 (October 4, 1993)(No. 92-1994) and for filing a frivolous appeal in Casillan v. Regional Transportation District, Nos. 92-1009 & 92-1039 (10th Cir. January 15, 1993). Respondent maintains the appeals were not frivolous. We disagree.

The appeals were found to be frivolous by the panels who decided them. We cannot overrule the judgment of another panel of this court. We are bound by the precedent of prior panels absent en banc reconsideration or a superseding contrary decision by the Supreme Court. United

States v. Killion, No. 92-3130, 1993 WL 408150 (10th Cir. October 13, 1993); United States v. Spedalieri, 910 F.2d 707, 710 n. 3 (10th Cir. 1990) (a three-judge panel cannot overrule circuit precedent); United States v. Berryhill, 880 F.2d 275, 277 (10th Cir. 1989), cert. denied, 493 U.S. 1049 (1990).

Respondent filed a petition for certiorari in Dunkin. The question presented for review was,

> "Whether an order sanctioning counsel currently of record is immediately appealable under the collateral order exception rule established by this Court in Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949).
>
> Whether sanctions may be imposed against counsel for filing appeals warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law."

Petition for certiorari, attached to appellant's motion to recall and stay the mandate filed July 12, 1993, in Dunkin v. Louisiana-Pacific Corp., Nos. 92-1230 & 92-1381 (10th Cir. February 11, 1993). Certiorari was denied without comment. Dunkin and Smith v. Louisiana-Pacific Corp., ___ U.S. ____, 114 S.Ct. 87 (October 4, 1993)(No. 92-1994).

At oral argument, respondent admitted that he has not paid any of the sanctions that have been imposed on him by this court or the district court. David L. Smith is

suspended from the practice of law before this court until all sanctions are paid. He may apply for reinstatement to our bar when he can demonstrate that each sanction order of this court or the district court has been satisfied.

The clerk shall provide a copy of this order to all courts before which Mr. Smith has been admitted to practice.

Entered for the Court
Per Curiam

United States Court of Appeals
for the Tenth Circuit

In re:	)	[February 13, 1996]
	)	
	)	No. 93-631
David L. Smith	)	
	)	

Order

Before Seymour, Chief Judge,
Baldock and Brorby, Circuit Judges

On December 14, 1995, this panel entered an order requiring respondent David L. Smith to show cause why he should not be disbarred for violating this court's November 1993 suspension order and for practicing in this court without authorization. On December 20, Mr. Smith filed his response. In ruling in this matter, the court has carefully reviewed that response, as well as the other pleadings filed to date in this disciplinary action. The court has determined that Mr. Smith's transgressions warrant disbarment.

Mr. Smith's name was referred for attorney discipline after more than one panel of this court determined he was filing frivolous appeals and failing to pay court ordered sanctions. Following briefing and oral argument, this panel suspended Mr. Smith from practicing in the Tenth Circuit. In re Smith, 10 F.3d 723 (10th Cir. 1993)(per curiam), cert. denied, 115 S.Ct.

53 (1994). Approximately one year later, Mr. Smith filed a request for reinstatement. This panel denied that request. See Order Denying Reinstatement, No. 93-631, (10th Cir. July 18, 1995).

During the course of his suspension, Mr. Smith continued to file briefs in this court. In particular, the court has identified four appeals in which Mr. Smith appears to have drafted briefs on behalf of the allegedly pro se appellants. Those appeals are 94-1127, Qualls v. Regional Transportation District, 94-1130, Dunkin v. Louisiana-Pacific Corporation, 94-1317, Howard v. Mail-Well Envelope Company, and 95-1198, Seales v. Jefferson County School District R-1. The December 14 show cause order was the culmination of this court's efforts to have Mr. Smith explain his involvement in these appeals.

In his response, Mr. Smith readily admits, as he has before, that he wrote and submitted the briefs in this court following the issuance of our suspension order. He maintains, however, that those submissions are not in violation of this court's order because he signed two of the briefs in question and included footnotes admitting his involvement in the other two. He suggests that these admissions absolve him of any allegations of "ghost-writing." See Johnson v. Board of County Commrs., 868 F. Supp. 1226, 1231-32 (D. Colo. 1994)(discussing elements of ghost-writing). The argument follows that because he admits his assistance, he cannot be subject to discipline. Mr. Smith's arguments misperceive the nature of the problem.

Mr. Smith was advised, in very clear terms, that he no longer had permission to practice law in this court. He was told he could not act as an attorney for his clients or former clients. In writing and filing briefs on behalf of otherwise pro se litigants, he violated that order. This breach existed regardless of whether he signed the briefs or inserted footnotes. Following the suspension order, Mr. Smith was prohibited from helping his clients with their briefs.

Contrary to assertions made in the response, the court has been very careful to distinguish between efforts made on behalf of clients and Mr. Smith's right to appeal sanctions issues on his own behalf. The briefs in the four cases identified asked for relief which went far beyond Mr. Smith as an individual. In 94-1127, for example, the alleged "pro se" brief requests relief in the form of reversing the district court's dismissal of certain claims and remand for an expedited jury trial on the merits. The front cover of that brief asserts it is being submitted by Mr. Qualls, not David Smith. We find it disingenuous for Mr. Smith to urge that these briefs only contained arguments personal to him.

Despite repeated warnings, Mr. Smith has chosen not to heed the orders of this court. He is, therefore, disbarred. His name will be stricken from the list of attorneys allowed to practice in this court. In addition, in accordance with Fed. R. App. P. 35(b), Mr. Smith's suggestion for hearing en banc was circulated to all judges of the court in regular active service. No member of the panel or the court has requested a poll. Therefore, the suggestion for en banc

hearing is denied. The request for evidentiary hearing is likewise denied. Mr. Smith is referred to the office of the Circuit Executive to file any desired judicial misconduct complaint.

Entered for the Court

Per Curiam

United States Court of Appeals
for the Tenth Circuit

	)	[February 16, 1996]
	)	
IN THE MATTER OF	)	Nos. 95-1091 &
DAVID L. SMITH,	)	95-1119
	)	(D.C. No. 93-DP-28)
Attorney-Appellant.	)	(D. Colo.)
	)	

ORDER AND JUDGMENT[4]

Before Tacha, Logan, and Kelly,
Circuit Judges

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

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[4]This order and judgment is not binding precedent, except under the doctrine of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

This appeal is from an order of the three-judge disciplinary panel of the United States District Court for the District of Colorado. Appellant Smith appeals pro se on numerous grounds relating to his suspension from the practice of law before this court and before the United States District Court for the District of Colorado. Appellant raises numerous grounds for his appeal relating to the application of local rules of the district court, the denial of due process in the procedures of that court and this court, and various allegations relating to the proceedings that resulted in suspension from the practice of law before the district court and this court.

This disciplinary matter has a long history in this court and in the district court. In November of 1993, a three-judge disciplinary panel of this court issued an order suspending appellant from the practice of law before the Tenth Circuit. In re Smith, 10 F.3d 723 (10th Cir. 1993) (per curiam), cert. denied, 115 S.Ct. 53 (1994). Following his suspension before the Tenth Circuit, the United States District Court for the District of Colorado conducted hearings, took evidence, and reviewed records related to the actions underlying the disciplinary proceedings. The arguments that Mr. Smith makes again on appeal are, in large measure, a renewed effort to bring before this court matters that were determined previously in the original disciplinary proceeding. Appellant further alleges on appeal that various district court judges from the United States District Court in Colorado have imposed unjust and harsh sanctions against him. Finally, appellant urges that his counsel Mr. Figa, who has withdrawn from this case, failed to

represent appellant competently in connection with all of the disciplinary actions. We find no merit in any of the arguments made on appeal. We approve the disciplinary order issued by the district court for substantially the reasons given in its post-hearing order. This court recently disbarred Mr. Smith for his failure to abide by previously entered orders. In re Smith, No. 93-631 (10th Cir. Feb. 13, 1996) (per curiam). Continued attempts by this appellant to further litigate matters already determined by this court or foreclosed by previous determinations could result in the imposition of sanctions. AFFIRMED.

The mandate shall issue forthwith.

ENTERED FOR THE COURT

Deanell Reece Tacha
Circuit Judge

United States Court of Appeals
for the Tenth Circuit

JAMES EDWARD QUALLS,	)	[July 23, 1996]
Plaintiff-Appellant,	)	
v.	)	Nos. 95-1385 95-1459 95-1489
REGIONAL TRANSPORTATION DISTRICT,	)	(D.C. No. 91-Z-989) (D. Colorado)
Defendant-Appellee,	)	
DAVID L. SMITH,	)	
Attorney-Appellant.	)	

ORDER AND JUDGMENT[5]

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[5]This order and judgment is not binding precedent, except under the doctrine of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Before Brorby, Ebel and Henry,
Circuit Judges

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Plaintiff James Edward Qualls and his attorney David L. Smith brought four appeals, Nos. 95-1246, 95-1385, 95-1459, and 95-1489, asserting the district court committed a litany of errors in Qualls v. Regional Transp. Dist., D. Colo. No. 91-Z-989. We have summarized Mr. Smith's history of misconduct before the United States District Court for the District of Colorado, the Tenth Circuit, and the United States Supreme Court in Howard v. Mail-Well Envelope Co., 10th Cir. No. 95-1428, and we need not repeat that summary here. A Tenth Circuit jurisdictional panel has (1) dismissed appeal No. 95-1246; (2) dismissed all of Mr. Smith's contentions in appeal No. 95-1385 except his challenge to the district court's order imposing sanctions on him; (3) consolidated appeal Nos. 95-1385, 95-1459, and 95-1489. Qualls v. Regional Transp. Dist., Nos. 95-1246, 95-1385, 95-1459, & 95-1489 (10th Cir. Apr. 12, 1996). Because Mr. Qualls has settled his case on the district court level and voluntarily dismissed his appeals, we conclude all of Mr. Smith's contentions on appeal are moot except his challenge to the district court's May 15, 1995, order terminating his representation of Mr. Qualls in light of the fact a disciplinary panel had suspended him from

practicing law before the United States District Court for the District of Colorado and his challenge to the many district court orders imposing sanctions against Mr. Smith personally.

We have recently exercised jurisdiction over an attorney's appeal from a district court's order disqualifying her from representing a party, even though she brought her appeal after the parties had dismissed the underlying case with prejudice pursuant to a settlement agreement, Johnson v. Board of County Comm'rs, 85 F.3d 489, 492 (10th Cir. 1996), and we see no reason to apply a different rule when, as in this case, the attorney-appellant challenges a sanction award assessed against him personally. Accordingly, provided Mr. Smith filed a timely notice of appeal after the entry of final judgment, we conclude we have the authority to review the merits of his appeal from the disqualification and sanctions orders.

On October 10, 1995, the district court entered its order dismissing the case with prejudice pursuant to the settlement agreement between Mr. Qualls and the Regional Transportation District. Mr. Smith subsequently filed a timely notice of appeal--in fact, he filed several. We therefore conclude we have jurisdiction to review the disqualification and sanctions orders. Having done so, we find no error and affirm for substantially the same reasons stated by the district court.

The disqualification and sanction orders challenged in appeals No. 95-1385, 95-1459, and 95-1489 are AFFIRMED, and the

remaining contentions in those appeals are DISMISSED. The petitions for writ of mandamus or prohibition in Nos. 95-1385, 95-1459, and 95-1489 are DENIED.

Entered for the Court

Wade Brorby
United States Circuit Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JAMES EDWARD QUALLS,	)	[August 5, 1996]
	)	
Plaintiff-Appellant-Petitioner,	)	
	)	
and,	)	
	)	
DAVID L. SMITH,	)	
	)	
Attorney-Appellant-Petitioner,	)	
	)	Nos. 95-1246
	)	95-1385
v.	)	95-1459
	)	95-1489
REGIONAL TRANSPORTATION DISTRICT, et al.,	)	(D.C. No. 91-Z-989) (Dist. of Colo.)
	)	
Defendants-Appellees-Respondents,	)	
	)	
and,	)	
	)	
ZITA L. WEINSHIENK, United States District Judge,	)	
	)	
Respondent.	)	
	)	

PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING EN BANC

David L. Smith hereby files his Petition for Rehearing and Suggestion for Rehearing En Banc:

I. PETITION FOR REHEARING

On July 23, 1996, a three-judge hearing panel of the United States Court of Appeals for the Tenth Circuit (composed of Brorby, Ebel and Henry, Circuit Judges) issued its (unpublished) order and judgment (copy attached hereto) affirming the "disqualification and sanction orders" challenged in appeals No. 95-1385, 95-1459, and 95-1489 "for substantially the same reasons stated by the district court." However, no reasons were stated by the district court for issuing the following "disqualification and sanction orders":

> 1. Judge Weinshienk's (December 10, 1992) order which severely attacked, reprimanded and warned Mr. Smith for seeking dismissal with prejudice of Mr. Qualls' remaining Title VII claim so that an appeal of his improperly dismissed claims under 42 U.S.C. §§ 1981, 1983, 1985(3) and 1986 could be taken to the United States Court of Appeals for the Tenth Circuit, and which was issued without giving Mr. Smith prior notice that attorney sanctions were being considered, and without giving him the opportunity to file a brief or otherwise respond to Judge Weinshienk's unsubstantiated attacks on his professional character, judgment and reputation;
>
> 2. Judge Weinshienk's (February 2, 1995) order denying Mr. Smith's

motion to continue her (September 21, 1994) disciplinary order, including the provision of the order staying the Committee on Conduct's (December 8, 1993) suspension of Mr. Smith from the practice of law in the District Court, nunc pro tunc to November 29, 1993;

3. Judge Weinshienk's (February 10, 1995) disciplinary order imposing "identical" discipline against Mr. Smith as that imposed against him by the Tenth Circuit disciplinary panel in its (November 29, 1993) disciplinary order, and suspending him from the practice of law in the District Court pursuant to D.C.COLO.LR 83.6P.;

4. Judge Weinshienk's (May 15, 1995) orders which removed Mr. Smith as Mr. Qualls' attorney and lifted the stay in Mr. Qualls' civil rights case, and which were issued without prior notice of the contemplated removal of Mr. Smith as Mr. Qualls' attorney and without an opportunity for them to file a brief;

5. Judge Weinshienk's (July 31, 1995) order denying Mr. Qualls' and Mr. Smith's motion for reconsideration of Magistrate Judge Abram's (January 28, 1994) order imposing harsh and unjustified sanctions of $8,187.50 against Mr. Smith for filing alleged "frivolous" discovery motions, and requiring him to pay this amount to Defendant-Appellee Regional Transportation District by no later than February 28, 1994;

6. Judge Weinshienk's (August 10, 1995) order granting Defendants' Motion for Attorney Fees, determining that the reasonable amount of attorney fees for filing the interlocutory appeal in Qualls was $1,187.50, and ordering Mr. Smith to pay this amount to Defendants-Appellees pursuant to the Tenth Circuit disciplinary panel's (July 18, 1995) order.

By relying on the district court's nonexistent reasons for issuing the foregoing "disqualification and sanction orders," the hearing panel deprived Mr. Smith of his First and Fifth Amendment right to access to the Tenth Circuit to review these orders pursuant to 28 U.S.C. § 1291.

The hearing panel dismissed as moot the "remaining contentions" in appeals No. 95-1385, 95-1459, and 95-1489. Apparently, the hearing panel is referring to the following "remaining contentions":

1. Judge Weinshienk's arbitrary, discriminatory and otherwise improper application of the Rule 56 summary judgment procedure and standard deprived Mr. Qualls of his First Amendment right to petition the government for a redress of grievances, as well as his Seventh Amendment right to a jury trial;

2. Judge Weinshienk grossly abused her discretion or otherwise acted improperly or in a manner detrimental to the fair and impartial administration of justice by issuing her (June 16, 1995) order refusing to

disqualify herself from the case pursuant to 28 U.S.C. § 455(a);

3. Mr. Qualls and Mr. Smith were entitled to an immediate appeal or writ of mandamus or prohibition under the exception to the final judgment rule established by the Tenth Circuit in Burkett v. Chandler, 505 F.2d 217 (10th Cir. 1974), cert. denied, 423 U.S. 876, 96 S.Ct. 149, 46 L.Ed.2d 110 (1975);

4. Judge Weinshienk's orders were also appealable under the "plain language" of 28 U.S.C. § 1292(a)(1), which permits immediate appeals of rulings relating to injunctions, including stays;

5. Judge Weinshienk's orders were appealable under 28 U.S.C. § 1291;

6. The contradiction between the (September 29, 1995) Stipulation of Dismissal With Prejudice and the (September 29, 1995) Settlement Agreement and Full and Final Release evidenced a fraud on Mr. Smith and/or the Court;

7. Judge Weinshienk's (October 10, 1995) Order of Dismissal is null and void;

8. By returning Mr. Smith's motions to him on the alleged basis that "Mr. Smith was never made a party to this case by the Court," Judge Weinshienk grossly abused her discretion or otherwise acted improperly or in a manner detrimental

to the fair and impartial administration of justice;

9. Judge Weinshienk also engaged in judicial misconduct pursuant to 28 U.S.C. § 372(c).

By ruling that these "remaining contentions" are moot, the hearing panel deprived Mr. Smith of his First and Fifth Amendment right to access to the Tenth Circuit to review these contentions pursuant to 28 U.S.C. § 1291.

The hearing panel denied the petitions for a writ of mandamus or prohibition in Nos. 95-1385, 95-1459, and 95-1489, but failed to give its reasons (if any) for the denial. However, Mr. Smith had an indisputable right to a writ of mandamus or prohibition under the Tenth Circuit's holding in Burkett v. Chandler, 505 F.2d 217 (10th Cir. 1974), cert. denied, 423 U.S. 876, 96 S.Ct. 149, 46 L.Ed.2d 110 (1975). Therefore, in the absence of any reasons for denying the petitions for a writ of mandamus or prohibition, the hearing panel deprived Mr. Smith of his First and Fifth Amendment right to access to the Tenth Circuit to review the actions of the district court pursuant to 28 U.S.C. § 1651 and Fed. R. App. P. 21.

II. SUGGESTION FOR REHEARING EN BANC

I express a belief based on a reasoned and studied professional judgment that the panel decision is contrary to the following decision of the United States Court of Appeals for the Tenth Circuit, and consideration by the full court is necessary

to secure and maintain uniformity of decisions in this court: Burkett v. Chandler, 505 F.2d 217 (10th Cir. 1974), cert. denied, 423 U.S. 876, 96 S.Ct. 149, 46 L.Ed.2d 110 (1975).

I express a belief based on a reasoned and studied professional judgment that this appeal involves one or more questions of exceptional importance: (1) Whether by relying on the district court's nonexistent reasons for issuing the "disqualification and sanction orders" challenged in appeals No. 95-1385, 95-1459, and 95-1489, the hearing panel deprived Mr. Smith of his First and Fifth Amendment right to access to the Tenth Circuit to review these orders pursuant to 28 U.S.C. § 1291; (2) Whether by ruling that the "remaining contentions" in these appeals are moot, the hearing panel deprived Mr. Smith of his First and Fifth Amendment right to access to the Tenth Circuit to review these contentions pursuant to 28 U.S.C. § 1291; (3) Whether Mr. Smith had an indisputable right to a writ of mandamus or prohibition under the Tenth Circuit's holding in Burkett v. Chandler, 505 F.2d 217 (10th Cir. 1974), cert. denied, 423 U.S. 876, 96 S.Ct. 149, 46 L.Ed.2d 110 (1975); (4) Whether in the absence of any reasons for denying the petitions for a writ of mandamus or prohibition, the hearing panel deprived Mr. Smith of his First and Fifth Amendment right to access to the Tenth Circuit to review the actions of the district court pursuant to 28 U.S.C. § 1651 and Fed. R. App. P. 21.

Dated this 5th day of August, 1996.

Respectfully submitted,

DAVID L. SMITH

1630 Welton Street
Suite 300
Denver, Colorado 80202
(303) 534-0153

ATTORNEY-APPELLANT-
PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August, 1996, true and correct copies of the foregoing Petition for Rehearing and Suggestion for Rehearing En Banc were placed in the United States mail, postage prepaid, addressed as follows:

Zita L. Weinshienk, United States
District Judge
United States Courthouse
1929 Stout Street
Denver, Colorado 80294

James Edward Qualls
5373 Blackhawk Way
Denver, Colorado 80239

Sally Zack Wheeler, Esq.
Rolf G. Asphaug, Esq.
Regional Transportation District
1600 Blake Street
Denver, Colorado 80202

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JAMES EDWARD QUALLS,	)	[August 29, 1996]
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	Nos. 95-1385
	)	95-1459
REGIONAL TRANSPORTATION DISTRICT,	)	95-1489
	)	
Defendant-Appellee,	)	
	)	
DAVID L. SMITH,	)	
	)	
Attorney-Appellant.	)	

ORDER
Entered August 29, 1996

Before BRORBY, EBEL AND HENRY,
Circuit Judges

This matter comes on for consideration of attorney-appellant's petition for rehearing and suggestion for rehearing in banc.

Upon consideration whereof, the petition for rehearing is denied by the panel that rendered the decision.

In accordance with Rule 35(b), Federal Rules of Appellate Procedure, the suggestion

for rehearing in banc was transmitted to all of the judges of the court who are in regular active service. No member of the panel and no judge in regular active service on the court having requested that the court be polled on rehearing in banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing in banc is denied.

Entered for the Court

PATRICK FISHER, Clerk

By: _____

Deputy Clerk